

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

GARDEN WORLD IMAGES LTD,

Plaintiff,

v.

CLARITY CONNECT, INC., a North
Carolina corporation, and TIMOTHY
HOWARD, an individual,

Defendants.

No. 2:12-cv-00803

**COMPLAINT FOR DAMAGES
AND INJUNCTIVE RELIEF**

DEMAND FOR JURY TRIAL

COMES NOW Plaintiff Garden World Images Ltd., by and through their attorneys
Meltzer Grant LLC, and allege as follows:

PARTIES

1. Plaintiff Garden World Images Ltd (“Garden World”) is a British company and
world-renowned supplier of high quality horticultural and botanical rights-managed images.
Specifically, Garden World owns and licenses the images that are the intellectual property at
issue in this lawsuit.

1 2. Upon information and belief, Defendant Clarity Connect, Inc. (“Clarity
2 Connect”) is a North Carolina corporation with its principal place of business at 360 Raleigh
3 St., Holly Springs, North Carolina 27540.

4 3. Upon information and belief, Defendant Timothy Howard (“Howard”) resides
5 in North Carolina and is Owner and President of Clarity Connect.

6 **JURISDICTION AND VENUE**

7 4. This is a civil action seeking damages and injunctive relief for copyright
8 infringement, falsification of copyright management information, and removal or alteration of
9 copyright management information.

10 5. Garden World is an alien Plaintiff.

11 6. The Court has original subject matter jurisdiction over this action pursuant to
12 the provisions of the Copyright Act of 1976 (the “Copyright Act”), 17 U.S.C. § 101 *et seq.*, 28
13 U.S.C. §§ 1338 (a) and (b), and 28 U.S.C. § 1331.

14 7. The Court has personal jurisdiction over the Defendants, who have sufficiently
15 continuous, systematic, and routine contacts with Washington to establish such jurisdiction.
16 Wrongful acts of the Defendants alleged herein occurred in and caused injury to Plaintiff in
17 Washington.

18 8. Venue in United States District Court for the Western District of Washington is
19 proper pursuant to 28 U.S.C. §§ 1391(b)(2) and (c).

BACKGROUND

9. Garden World is in the business of licensing premium stock photography images. With a library of over 2 million images, Garden World is one of the world's largest suppliers of horticultural and botanical images.

10. Upon information and belief, Clarity Connect is a firm that provides marketing services—including custom website design, logo design, print materials, and horticultural marketing—to clients across the United States. Clarity Connect owns and operates the domains clarity-connect.com, popsignage.com, catalogsondemand.com, and clarityquicksite.com.

11. Garden World's library includes images from some of the world's foremost horticultural and botanical photographers.

12. Garden World's library includes images taken by Ben Phillips (the "Images"), a renowned American photographer.

13. In April 2012, Garden World submitted three copyright applications to the United States Copyright Office ("Copyright Office") for registration of the Images. The Copyright Office received these applications on April 18–19, 2012, and issued these applications Service Request numbers 1-753589321, 1-754656243, and 1-755001830. An appropriate registration fee and applicable deposit materials accompanied each application.

14. In 2011, Garden World discovered that some of its images, including 218 photographs from the Images, were being used without authorization on at least 9 websites designed, operated, owned, and/or maintained by Mr. Howard and Clarity Connect.

1 15. In a May 5, 2011, telephone call with Garden World, Mr. Howard admitted that
2 he had distributed copies of the Images without authorization.

3 16. On information and belief, Mr. Howard and Clarity Connect conveyed copies
4 of the Images using copyright management information as defined under 17 U.S.C. § 1202(c).

5 17. The unauthorized reproduction and distribution of the Images have caused
6 Garden World to suffer damages in Washington.

7 **FIRST CAUSE OF ACTION—COPYRIGHT INFRINGEMENT OF THE IMAGES**

8 18. Plaintiff Garden World incorporates paragraphs 1–17 above, as though fully set
9 forth herein.

10 19. Garden World has submitted to the Copyright Office copyright applications,
11 deposit materials, and fees that will lead to the issuance of valid and exclusive registered
12 copyrights to the Images, which are the subject of this action.

13 20. As set forth above, Defendants made and distributed copies of the Images
14 without Garden World's authorization.

15 21. The actions and conduct by Defendants infringe upon Garden World's
16 exclusive 17 U.S.C. § 106 rights.

17 22. Such actions and conduct constitute copyright infringement under 17 U.S.C. §
18 501.

19 23. As a result of the copyright infringement described above, Garden World is
20 entitled to relief, including, but limited to, injunctive relief and damages.

SECOND CAUSE OF ACTION—REMOVAL OR ALTERATION OF COPYRIGHT

MANAGEMENT INFORMATION

24. Plaintiff reincorporates paragraphs 1–23 above, as though fully set forth herein.

25. By causing to be placed or placing Defendants’ names and logos on unauthorized copies of the Images that Defendants made and distributed, or by otherwise changing the copyright management information conveyed in conjunction with the Images, Defendants, without authority, intentionally removed or altered copyright management information; distributed copies of the Images knowing that copyright management information had been removed or altered; and did so knowing or having reasonable grounds to know that its actions will induce, enable, facilitate, or conceal an infringement.

26. Such actions and conduct constitute the removal or alteration of copyright management information under 17 U.S.C. § 1202(b).

27. As a result of the removal or alteration of copyright management information as described above, Garden World is entitled to relief including, but not limited to, injunctive relief, actual or statutory damages, statutory costs and attorney’s fees, and prejudgment interest.

THIRD CAUSE OF ACTION—FALSIFICATION OF COPYRIGHT MANAGEMENT

INFORMATION

28. Plaintiff reincorporates paragraphs 1–27 above, as though fully set forth herein.

29. By causing to be placed or placing names, logos, and/or licensing information on unauthorized copies of the Images that it distributed, or by otherwise conveying its own copyright management information in conjunction with the Images, Defendants knowingly

1 and with the intent to enable, facilitate, or conceal infringement, provided false copyright
2 management information and distributed copyright management information that is false.

3 30. Such actions and conduct constitute the falsification of copyright management
4 information under 17 U.S.C. § 1202(a).

5 31. As a result of the falsification of copyright management information, Garden
6 World is entitled to relief including, but not limited to, injunctive relief, actual or statutory
7 damages, statutory costs and attorney's fees, and prejudgment interest.

8
9 **PRAYER FOR RELIEF**

10 WHEREFORE, Plaintiff prays for the following relief:

11 A. On the First Cause of Action, for an award of actual damages and profits pursuant
12 to 17 U.S.C. § 504(b). And for an order permanently enjoining Defendants from infringing any
13 images from the Garden World library.

14 B. On the Second Cause of Action, for an award of actual damages and any additional
15 profits of the violator pursuant to 17 U.S.C. § 1203(c)(1)(A), or for statutory damages of not less
16 than \$2,500 or more than \$25,000 per violation pursuant to 17 U.S.C. § 1203(c)(1)(B), or for
17 treble damages pursuant to 17 U.S.C. § 1203(c)(4). And for an order permanently enjoining
18 Defendants from removing or altering Plaintiff's copyright management information pursuant
19 to 17 U.S.C. § 1203(b)(1). And for an award of costs and attorney's fees pursuant to 17 U.S.C. §§
20 1203(b)(4)-(5).

21 C. On the Third Cause of Action, for an award of actual damages and any additional
22 profits of the violator pursuant to 17 U.S.C. § 1203(c)(1)(A), or for statutory damages of not less

1 than \$2,500 or more than \$25,000 per violation pursuant to 17 U.S.C. § 1203(c)(1)(B), or for
2 treble damages pursuant to 17 U.S.C. § 1203(c)(4). And for an order permanently enjoining
3 Defendants from falsifying Plaintiff's copyright management information pursuant to 17 U.S.C.
4 § 1203(b)(1). And for an award of costs and attorney's fees pursuant to 17 U.S.C. §§ 1203(b)(4)-
5 (5).

6 D. For prejudgment interest on the amount of the award to Plaintiff, as appropriate;

7 E. And for such other and further relief as the Court deems equitable, proper, and just.

8
9 DATED: May 8, 2012

10
11 MELTZER GRANT LLC

12 by s/ Eric S. Meltzer

13 by s/ John E. Grant, III

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